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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/689,615 | 10/13/2000 | Richard A. Esser | 04350.0012-00000 | 8050 |

22852 7590 11/25/2002

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/689,615 | ESSER, RICHARD A. | |
| | Examiner | Art Unit | |
| | Stephen J. Castellano | 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 13 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13 and 20-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>13</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 22-28 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 3.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Choi and Zeigler ('980).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 20, 21, 29-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler ('946) (Zeigler).

Zeigler discloses a portable shelter assembly as shown in Fig. 1A-1D, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2B and 2C and a collapsed formation as shown in Fig. 2A. Zeigler discloses the invention except for the device forms a canopy with an open bottom rather than a containment device which is open at the top. It would have been obvious to invert (turn up-side-down) the portable shelter assembly in order to form a containment device which can be rapidly deployed so that a container could be provided to hold items. The assembly includes rods (struts) and hubs and a canopy attached to the hubs, the rods

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are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Claims 1-9, 20, 21, 29-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esser et al. (Esser).

Esser discloses a quick erect shelter apparatus as shown in Fig. 1, the assembly has a collapsible framework as shown in erected and open formation in Fig. 2a and 8a. Esser discloses the invention except for the device forms a canopy with an open bottom rather than a containment device which is open at the top. It would have been obvious to invert (turn up-side-down) the quick erect shelter apparatus in order to form a containment device which can be rapidly deployed so that a container could be provided to hold items. The assembly includes rods and hubs and a canopy attached to the hubs, the rods are joined by a scissors connection intermediate their ends, the rods are connected at their ends to the hubs, each end portion pivoting along separate axes of revolution in relation to the hub, each end portion being rotatable about its axis of revolution from the closed compact configuration, where all the rods are parallel, to an erect open configuration, the containment device articulating about three axes, whereby the containment device collapses between the compact and open configurations in

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height, length and width. The hubs positioned proximate the top of the collapsed configuration descend downwardly towards the bottom portion of the containment device when converting from the collapsed configuration to the erect configuration.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeigler in view of Lobbert.

Zeigler discloses the invention except for the liner positioned in the receptacle adjacent the canopy. Lobbert teaches a device for collecting waste wherein a container (7) on the interior of a device is lined by a removable liner (18). It would have been obvious to add a liner adjacent to the interior of the canopy in order to more easily remove waste from a device which has a part for receiving waste products which is more permanently connected than a removable liner laid upon the device. The removability is motivated by the convenience in rapidly removing the liner rather than needing to disconnect the canopy from each of the hubs and by constructing a liner of an easily cleanable plastic material which will reduce the accumulation of germs and disease associated with hazardous materials because the liner is the part exposed to contamination not the canopy.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Esser in view of Lobbert.

Esser discloses the invention except for the liner positioned in the receptacle adjacent the canopy. Lobbert teaches a device for collecting waste wherein a container (7) on the interior of a device is lined by a removable liner (18). It would have been obvious to add a liner adjacent to the interior of the canopy in order to more easily remove waste from a device which has a part for receiving waste products which is more permanently connected than a removable liner laid

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upon the device. The removability is motivated by the convenience in rapidly removing the liner rather than needing to disconnect the canopy from each of the hubs and by constructing a liner of an easily cleanable plastic material which will reduce the accumulation of germs and disease associated with hazardous materials because the liner is the part exposed to contamination not the canopy.

Applicant's arguments filed October 10, 2002 have been fully considered but they are not persuasive. In response to remarks made that not all of the strut pairs of Zeigler ('946) are connected by a pin or rivet, the rods need only to be connected and such connection could be a direct connection or an indirect. All of the rods are connected by at least an indirect connection where one or more members are placed between the rods to connect the rods to each other. In response to applicant's failure to find first and second hubs, the hub assembly (89, 89', 91, 91', 93, 93', 95 and 95') disclose the hubs. The first and second hubs alternate in pairs. For example, pair 89 and 89' could be considered first hubs, pair 91 and 91' could be considered second hubs, etc. Also, most if not all of the claims require only two rods, two first hubs and two second hubs and the references show these limitations.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
October 24, 2002